

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOHN EDWARD BOWE,
Plaintiff,

v.

8:18-CV-992
(TJM/CFH)

TOM WILSON, Chairman, CEO, President,
Allstate Insurance; ALLSTATE INS. CORP.,

Defendants.

Thomas J. McAvoy,
Sr. U.S. District Judge

DECISION & ORDER

This *pro se* action seeks judgment against the Defendants—who are insurers—for failure to compensate Plaintiff for injuries caused when Defendants' insured struck Plaintiff with an automobile. The Court referred the action to the Hon. Christian F. Hummel, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

The Report-Recommendation, dated December 11, 2018, recommends that Plaintiff's Second Amended Complaint be dismissed with leave to re-plead if Plaintiff can demonstrate that a judgment of liability against Defendants' insured exists. See dkt. # 13.

Plaintiff filed timely objections to the Report-Recommendation. See dkt. # 14. When objections to a magistrate judge's Report-Recommendation are lodged, the Court makes a “*de novo* determination of those portions of the report or specified proposed

findings or recommendations to which objection is made.” See 28 U.S.C. § 636(b)(1). After such a review, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.” Id.

Having reviewed the record *de novo* and having considered the issues raised in the Plaintiffs’ objections, this Court has determined to accept and adopt the recommendation of Magistrate Judge Hummel for the reasons stated in the Report-Recommendation. Plaintiff may not maintain a claim against the insurer for failing to pay him funds from an insurance policy issued to a third party unless he can show that the existence of a judgment against that third-party insured.

Subsequent to filing his objections, the Plaintiff filed a Third Amended Complaint. See dkt. # 15. In anticipation of such filing, the Magistrate Judge had ordered the Clerk of Court to “return this case to the magistrate judge for review of the third amended complaint to determine whether plaintiff has demonstrate that he had obtained a state court judgment of liability against the insured third party.” Dkt. # 13 at 15-16.

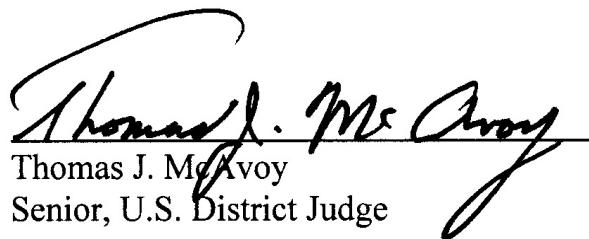
It is therefore **ORDERED** that Plaintiff’s objections to the Report-Recommendation of Magistrate Judge Hummel, dkt. # 14, are hereby OVERRULED. The Report-Recommendation, dkt. # 13, is hereby ACCEPTED and ADOPTED, and:

1. The Defendants’ Second Amended Complaint, dkt. # 9, is hereby **DISMISSED without prejudice** and with a final opportunity to amend should Plaintiff be able to demonstrate the existence of a judgment of liability against the insured party;

2. Per the terms of Magistrate Judge Hummel's Order, the case is hereby referred to Magistrate Hummel for an evaluation of the Third Amended Complaint.

IT IS SO ORDERED.

Dated:January 9, 2019



Thomas J. McAvoy
Senior, U.S. District Judge